SUPREME COURT, U.S.

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In the Supreme Court of the United States

OCTOBER TERM, 1963.

No. 601.

LESLIE D. STICKLER,
Appellant,

vs.

THE STATE OF OHIO,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF OHIO.

PETITION FOR REHEARING.

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TABLE OF CONTENTS.

Reasons for Granting Rehearing and Issuing the Writ 1

Conclusion 6

Certificate of Counsel 6

Appendix:

Affidavit "A" 7

Affidavit "B" 8

Affidavit "C" 9

Affidavit "D" 12

Affidavit "E" 12

Affidavit "F" 13

Excerpts from Prosecuting Witness Steffen's Testimony 15

Excerpts from Sestito Testimony 29

TABLE OF CASES.

Brady v. Maryland, 373 U. S. 83 (1963) 4, 5

Communist Party v. Control Board, 351 U. S. 115 (1956) 5

Napue v. Illinois, 360 U. S. 264 (1959) 4

Pyle v. Kansas, 317 U. S. 213 (1942) 4

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PETITION FOR REHEARING.

Petitioner prays that this Court grant a rehearing of its order of January 13, 1964, dismissing the appeal and denying the petition for certiorari, ____ U. S. ____ and that a writ of certiorari issue to review the judgment of the Supreme Court of Ohio in the above styled case as prayed for (in the alternative) in the jurisdictional statement filed November 1, 1963.

REASONS FOR GRANTING REHEARING AND ISSUING THE WRIT.

At the time of this Court's order of January 13, 1964, and for a short time prior to that date, Appellant had been in the process of gathering new, theretofore undiscoverable, and corroborating evidence of the suborned perjury

of a principal witness against him. See Affidavits A and B, Appendix pp. 7 and 8. Prior to the securing of Affidavits A and B, the Appellant had the information in the affidavit from the affiant in Affidavit C (Appendix pp. 9-11) but it was not clear and not corroborated until the receipt of Affidavits A and B (see Affidavit D, Appendix p. 9). Appellant had intended filing the Affidavits A, B, and C as supplementary material to question 11 at pages 48-49 of the jurisdictional statement. However, the decision on January 13, 1964, frustrated the supplemental filing and the material is, perforce, presented through the medium of this petition for rehearing.

Additional new evidence was discovered on or about January 27, 1964, and reduced to affidavit form on that date (see Affidavits E and F, pp. 12 to 14). The new evidence indicates that the prosecuting witness did not testify truthfully about the time and manner in which he met Appellant. (Cf. the excerpt from Steffen's testimony, Appendix pp. 16 to 17, with Affidavit E, 4th paragraph, Appendix p. 13). This bears directly both on the credibility of the witness and the nature of Appellant's transactions with him.

The verity of the prosecuting witness is further impugned by a comparison between his testimony with respect to Appellant's declarations in the latter's office on "Jan. 7" (see excerpt from Steffen's testimony, Appendix pp. 17 to 21) and Affidavit F, 6th paragraph (Appendix p. 14) where it is indicated that Appellant said nothing. This contradiction reaches both the credibility of the witness and substance of admissions attributed to the Appellant.

All of the material relied upon in Affidavits A, B, C, E, and F (Appendix, pp. 7 to 14) is relevant. Due dili-

gence by Appellant and his counsel did not, and could not, bring to light the evidence corroborating Affidavit C (i.e. Affidavits A and B, Appendix pp. 7 to 9) until late December of 1963 and early January of 1964. Despite the same diligence the material in Affidavits E and F (Appendix pp. 12 to 14) did not come to light until on or about the last week in January, 1964.

1. What had been a circumstance[1] suggesting perjury at the time the jurisdictional statement was prepared and filed, has ripened into suborned perjury on substantive matters going to heart of this matter. This conclusion is supported by five affidavits.

Had the truth been told the evidence would necessarily be in this posture:

(a) The witness Sestito would have made loans to Appellant as a result of his own personal acquaintance with him (Affidavit C, Appendix p. 10) or because of a referral from Schott (Affidavits A and C, Appendix pp. 7 and 10, respectively) rather than as a result of "grapevine" information (Affidavit A, Appendix p. 7). Thus the public aspects of Appellant's borrowing would have been rebutted rather than buttressed. (Cf. Excerpts from Sestito Testimony, Appendix, pp. 29 to 31.)

(b) The Witness Sestito would have said that Schott, not Appellant, made representations to him that the money borrowed was going into construction. (Affidavits A and C, Appendix pp. 7 and 10.) This too would have supported Appellant's contentions rather than contradicting them. (Cf. Excerpts from Sestito Testimony, Appendix, pp. 29 to 31.)

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[1] Conflicting testimony in a subsequent trial.

(c) The prosecuting witness would have testified that he met Appellant through a reference from a friend of the witness near the end of 1960 (Affidavit E, Appendix, p. 13) and Appellant would neither have been described as coming to a conference with the prosecuting witness in September of 1959 (Appendix, pp. 16-17), nor as responding to an invitation to describe his business affairs to him. This evidence relates directly to the public aspects facts of the transactions for which Appellant was on trial as well as the witness' credibility.

(d) The prosecuting witness would never have truthfully said that Appellant made any of the admissions attributed to him (see e.g. the excerpt from Steffen's testimony, Appendix, pp. 20-21).

* * * * * *

Neither suppression nor knowing use of false testimony *Pyle v. Kansas*, 317 U. S. 213, 215-216 (1942), nor withholding after demand, *Brady v. Maryland*, 373 U. S. 83, 87 (1963) nor allowing known false testimony to go uncorrected will satisfy due process, *Napue v. Illinois*, 360 U. S. 264 (1959). It is of no significance to the rule that the perjury goes to credibility rather than substance, *Napue v. Illinois*, ibid., or that the prosecution acted in good or bad faith:

> "We now hold that the suppression of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or punishment, irrespective of the good faith or bad faith of the prosecution, *Brady v. Maryland*, ibid., 87."

Appellant does not say the prosecution acted in bad faith. He cannot be sure of that. But if the state did not

procure the perjury, it was the beneficiary of it. The conviction—the state's objective—rests upon it. The state's judicial machinery was the vehicle for it.

Moreover, when confronted with the assertion of Sestito's perjury, at a time when the Appellant was certain only of conflicting testimony in separate trials, the state did not deny it. Its complete response to the perjury assignment of error in the Supreme Court of Ohio was

> "In light of all the evidence produced in the trial, this assignment must fail."

This suggests that the infirmities introduced by perjury are cured by other supporting evidence. This is not so.

> "* * * it does not remove the taint [of perjury] for a reviewing court to find that there is ample innocent testimony to support the * * * findings." *Communist Party v. Control Board*, 351 U. S. 115, 124-125 (1956). (Bracketed material supplied.)

* * * * *

This court has adopted as its own the proposition that—

> "The United States wins its point whenever justice is done its citizens in the courts," *Brady v. Maryland, supra*, 87."

By the standard of that aphorism the United States has lost a point so long as this conviction stands.

The grant of certiorari (and eventually a new trial) will score twice—once for the country's point and once for Appellant's.

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CONCLUSION.

For reasons stated above and in the jurisdictional statement, this motion should be granted and upon rehearing a writ of certiorari should issue to the Supreme Court of Ohio.

Respectfully submitted,

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Attorneys for Appellant.

Certificate of Counsel.

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay and is restricted to grounds specified in Rule 58 of the Rules of this Court.

JACK G. DAY,
Counsel for Petitioner.

APPENDIX.

AFFIDAVIT "A."

My name is Edward E. Olsvig. I reside at 560 Sunny Lane, Cincinnati 44, Ohio.

Regarding a conversation of early June 1961 between Pat Sestito and myself, pertaining to the involvement of he, Mr. Ed Schott, Jr. and Less Stickler as to monies he loaned them separately, he informed me that he intended to testify at Mr. Stickler's trial for the prosecution and that he was going to testify in such a way, if possible, to favor Ed Schott in an attempt to make Stickler the goat in the whole situation. By doing so he would be repaid by Ed Schott the money he lost to Stickler. This offer of repayment, he said, was made by Ed Schott to himself in an effort to get Schott off the hook.

The first thing that he was to testify to was that it was Stickler who told him of his construction of garages, hotels, etc. in order to get him to invest some money, when in reality it was Ed Schott who had made these representations to him; that he did not hear them from Stickler.

Secondly, he was to testify that he came to Stickler from information that he had picked up through the local grapevine and that Ed Schott had not sent him to Stickler, when in reality, he, Ed Schott, did refer Pat to Stickler as a person to whom he could lend his money directly because Ed Schott was cutting down pretty well on the amount that he was personally borrowing. Pat said he was told by Ed Schott that he would be repaid by himself the total amount he had lost to Stickler if he would testify in the above manner. This conversation took place in my office and, at that time, I told Pat I didn't believe he had $6000.00 invested. He, thereupon, produced an envelope which contained the notes and post dated checks and gave them to me to look at. I added up the notes and post dated

checks and they did total a little over $6000.00. I told Pat, at this time, that he was nuts for sticking his neck out for a perjury charge even if he did get his money back, that I thought someone would probably trip him up and that he would still lose his money as well as possibly do a stretch in jail for it. Later on, about a year later, when I talked to Pat, he said he had gotten some of his money back from Schott and he was to get the rest soon.

I make this statement voluntarily, out of my own free will this 31st day of December, 1963.

EDWARD E. OLSVIG.

(Jurat omitted.)

AFFIDAVIT "B."

My name is Floyd W. Gibson, and I live at 1391 Burdett Avenue, Cincinnati, Ohio. I am employed for the County of Hamilton.

During 1961, I was employed as a part-time furniture salesman for Ray Cole, who did business at 130-132 East Court Street, Cincinnati, Ohio, under the name of R. Cole and Company. One afternoon, in the last week of June, 1961, I was sitting outside Mr. Cole's office, waiting for him to finish conversing with Pat Sestito, a furniture salesman who also worked for Mr. Cole from time to time.

While I could hear their conversation easily, I didn't pay any particular attention to it, until, I heard the names "Shott" and "Stickler." As Stickler had been my attorney in the past, and as both names "Stickler" and "Shott" had been appearing in the newspapers daily on some criminal business, I took an interest in what these two men were saying.

Pat was telling Ray that at the suggestion of Ed Shott, he, Pat, had presented false testimony at the trial of Les

Stickler and that at Shott's trial, Pat had testified favorably for Shott. Pat also told Ray that Shott had promised to pay Pat back every dime that Pat had lost to Stickler if Pat would change his testimony to blame Stickler and not Shott. Another thing that I heard Pat tell Ray was that it was Shott, not Stickler, who had told Pat about building contractors.

Pat was speaking pretty loudly and Ray cautioned him that I was right outside the door, but Pat said, "that don't make any difference—I want to talk to him anyway." When Pat did come out of Ray's office, he came over to me and asked me if I didn't want to make some dough. When I asked him what I had to do to make it, he told me that as he knew that I knew Stickler, that maybe Shott would want me to testify against Stickler in his coming trials. When I told Pat that I didn't even know what both men were being indicted for, what could I say in a trial? he (sic) told me that I didn't need to know anything—Mr. Shott would tell me what to say. He left then, telling me to think it over as there was some good money to be made.

I make this statement voluntarily of my own free will this _____ day of _____, 1964.

FLOYD W. GIBSON.

(Jurat omitted.)

AFFIDAVIT "C."

My name is Ray Cole, I live at 1502 Corvallis, Cincinnati, Ohio. I've lived there for ten years, and I have had a business at 130 and 132 East Court Street, since 1950. Pat Sestito, who formally worked for me was talking to me on Wednesday, June 28, 1961 and he told me that he had to go over and make a statement or a testimony for Edgar I. Shott, who was being tried at that time. He asked

me, "Ray, what would happen if I would change my testimony?" I said, "Pat, that's entirely up to you, I have nothing to do with that." He said, "Well, I can get something out of it, I can get some bread out of it if I change it, and I would be a fool not to do it." I said, "That's entirely up to you, Pat." He said, "Well, that's what I wanted to know, I'll come back over and see you later." I said, "O. K. Pat."

Later, on the same day, he came over to my establishment and said that he had changed his testimony to favor Shott; that he did not mention any representations on Shott's part as to the contracting business; that Shott promised to pay him for making this testimony as favorable as possible.

He further told me on this same day, that he had deliberately presented perjured testimony in the trial of Leslie D. Stickler at the suggestion of Edgar I. Shott who promised to indemnify him for every bit of money that he had lost to Stickler if he would lie about Stickler on the witness stand and, before that, in his testimony before the Grand Jury and the Prosecutor's office. Sestito said that it was Shott, not Stickler, who made misrepresentations about contractors and that Shott told him to put the blame on Stickler, which he did; that Stickler never did make any representations about contractors to him. He further stated that Shott never did send him to Stickler; that he and Stickler had been doing business in reference to a furniture store since June of 1960; that one day in late November, he was sitting in Stickler's office and he showed Stickler a check which he received from Shott and proceeded to tell Stickler of Shott's money deal. He further stated that Stickler immediately told him that Shott was loaning him the money; that Pat asked Stickler if he could loan him money direct as long as he did not have any money with Shott at the time, and Stickler said it was

alright; that Pat jumped at the chance to loan directly to Stickler because in that way he could keep all of the interest he received for the loan, because Shott took half of the interest when Shott loaned the money directly to Stickler; that there was no discussion as to any contractors; that the time period of the loan and the amount of interest to be received for the period of the loan was the only thing that was discussed.

During the course of this conversation, I cautioned Pat that one of my salesmen, Bill Gibson, was sitting on a sofa right outside my office and that he might be able to hear our conversation. Pat said that he didn't care since he wanted to see Gibson anyway. Later on I discovered that Bill Gibson was also known as Floyd W. Gibson. After our conversation was over, Pat did go out and talked to Gibson but this was not in my presence.

Sestito further stated that he knew that Shott was instrumental in getting other witnesses who also dealt with him first, and then with Stickler, to lie about Stickler and to testify against Stickler on the same proposition of repayment of whatever loss they had with Stickler as to unpaid loans.

Subsequent to this conversation, Pat revealed to me that Ed Shott did in fact send him originally to Stickler, but that since he already knew Stickler personally, and in fact was doing some business with Stickler on another matter, he did not ever tell Stickler that Shott sent him to him.

I make this statement voluntarily of my own free will this 7th day of Jan., 1964.

RAY COLE.

(Jurat omitted.)

AFFIDAVIT "D."

STATE OF OHIO,
HAMILTON COUNTY, SS.

Leslie D. Stickler, being duly cautioned and sworn says that he was unable to obtain "Exhibit A and B" prior to the date shown on the face of the affidavits. That he had an affidavit from Ray Cole, "Exhibit C" which was uncorroborated and not clear prior to the obtaining of "Exhibit A and B." That none of the information contained in the affidavits were known at the time of the trial and was not known at the time of the initial appeal to the Court of Appeals of Ohio. Due to the absence of corroboration, it was not used for appeal purposes.

LESLIE D. STICKLER.

(Jurat omitted.)

AFFIDAVIT "E."

My name is Terence C. Ruf. I reside at 2126 Slane Ave., Norwood, Ohio. I am the son of John J. Ruf, now deceased.

On June 20, 1961, my father was found in the Ohio River, shot and drowned under mysterious circumstances. During the subsequent two or three weeks following his death I and my brother, John R. Ruf, were involved in trying to investigate his death. We recalled that the Friday or Saturday before his disappearance and subsequent death, he had spent the day with a pizza operator by the name of Robert Steffen, who I also knew casually in the past. I called Steffen to see if my father had said anything to him that day which might shed some light on his disappearance and death. Steffen suggested that I stop in his place at my convenience and we could talk.

Two weeks later, approximately the first week in July, 1961, one evening, I ordered some pizza by phone and dropped by Mr. Steffen's establishment to pick them up. He and I stepped outside, and I talked to him for about 10 minutes in reference to my father and also current inquiries by the internal revenue.

During the course of this conversation the subject of our involvement with Leslie D. Stickler came up. Steffen said that he dealt from the beginning and for quite some time only with Edgar I. Shott; that he had made money as a result and paid his taxes on it. That he did not know anything about Leslie D. Stickler. That he was dealing with Shott all of this time and that Shott never mentioned Stickler to him until near the end of 1960 when Shott advised him to deal directly with Stickler.

Steffen also advised me to see his bookkeeper, Mr. Bunker, if I had any tax troubles. That was the extent of our conversation that evening.

I make this statement voluntarily, of my own free will, this 27th day of January, 1964.

TERENCE C. RUF.

(Jurat omitted.)

AFFIDAVIT "F."

My name is John R. Ruf. I reside at 8165 Camargo Road, Cincinnati 43, Ohio. I am the son of John J. Ruf, now deceased.

On Saturday, January 7, 1961 I received a call from my father, John J. Ruf, to attend a meeting at his home that evening. He would not discuss the purpose of this meeting on the phone.

That evening I went to my father's house at 2211 Drex Avenue, Norwood, Ohio where I found my father,

mother, brother, and his wife and my sister. I arrived late. My father informed me that he had been to a meeting that afternoon in the office of Leslie D. Stickler and that all the money that he had loaned Stickler was lost. He did not have much else to say.

Since the others had been there earlier I took him aside and asked him for details. He told me that this meeting was attended by Ed Shott, his secretary, Mickey, Robert Steffen, and his bookkeeper, Robert Bunker. Also, one or two other people were there and Stickler and two lawyers.

He told me that Stickler was being investigated by the Division of Securities of the State of Ohio for borrowing money. He told me that Stickler could not pay back the money he borrowed. This meeting was for the purpose of trying to reach a solution as to how to salvage a way to pay back people who lost money; that a suggestion was made to try to get the people who had made money to pay back a certain amount for the benefit of those who lost money.

I asked him what Stickler said at this meeting. He told me that Stickler did not have anything to say; that his attorneys did all the talking. As a matter of fact, he said that Stickler was in a very depressed condition. That is all my father had to say about this particular meeting.

I make this statement voluntarily, out of my own free will this 27th day of January, 1964.

JOHN R. RUF.

(Jurat omitted.)

EXCERPTS FROM PROSECUTING WITNESS STEFFEN'S TESTIMONY.

A. The second man.

Mr. Cartolano: Let the record show he is indicating the Defendant.

Q. Mr. Steffen, would you tell us, to the best of your ability, when you first met Mr. Stickler; and may I ask this also, under what circumstances?

A. The first day I met Mr. Stickler was in Mr. Shott's office the first day I entered into this transaction. It was in, I believe, September.

Q. Of what year?

A. Of 1959.

Mr. Smith: What year was that?
Mr. Cartolano: September, 1959.

Q. Did you have an appointment to meet Mr. Stickler at that time?

A. No, I never.

Q. You stated you were in Mr. Shott's office; will you tell us who Mr. Shott is?

A. Mr. Shott is a lawyer who has offices in the Atlas Bank Building.

Q. Is that in Cincinnati, Ohio?

A. In Cincinnati.

Q. Could you tell us, Mr. Steffen, how you came to meet Mr. Shott?

A. Well, while operating my business, Mr. Shott would come in for orders to take home to eat, and after several orders we talked, like I talk with everybody that comes in the place, and got rather friendly and just passing the time of day. And I didn't know who he was until he called an order in on a couple of occasions and I associated the name with the person as he came in.

Q. May I paraphrase that.

Mr. Smith: Objection to any paraphrasing by the prosecutor.

Q. You met him as a customer then?

A. That's right.

Q. Now, as a result of your meeting him as a customer, you had an appointment then with Mr. Shott in September, 1959?

A. Yes, sir.

Q. That was to discuss certain arrangements?

A. That's right.

Q. Now, you were in his office; did you have a discussion with him in the office?

A. Yes, I did.

Q. Would you tell us how, then, you met Leslie Stickler?

A. Well, after the discussion with Mr. Shott, I would say 15 minutes possibly, Mr. Stickler came in the office.

Q. Had you ever seen Leslie Stickler before that particular moment?

A. No, I haven't.

Q. Had you ever heard of him?

A. No.

Q. So far as you know, had he ever seen you?

A. No, I didn't know him.

Q. As far as you know, had he ever been a customer at your pizza place?

A. No, he hadn't.

Q. What was done when Mr. Stickler entered Mr. Shott's office?

A. He came in the office with some papers in his hand, and Mr. Shott introduced me to Mr. Stickler, and Stickler had some checks and a note which he transferred

to Mr. Shott, just in hearsay, after which Mr. Shott asked Mr. Stickler to tell me of this operation of his.

Q Now, did Mr. Stickler tell you of his operation?

A. Yes, he did.

Q. Now, will you tell this jury, Mr. Steffen, what Mr. Stickler told you?

A. Mr. Stickler—

Mr. Smith: Objection until such time, your Honor, as there is proof of a corpus delicti. No statements made by the Defendant are admissible.

The Court: I didn't quite hear you.

Mr. Smith: Until there is the showing of a corpus delicti, no statements by the Defendant are admissible.

Mr. Cartolano: All right, we will go along with that.

* * * * *

Q. Did you see Mr. Stickler on January the 7th, Saturday?

A. Yes, I did.

Q. Will you tell us where you saw him?

A. I saw him in his office at approximately 2:30 in the afternoon.

Q. Where was his office located at that time?

A. Corner of Fifth and Walnut, upstairs there.

Q. That would be the Fountain Square Building?

A. If that is where it is, that is where I went.

Q. Had you ever been to his office before?

A. No, I haven't.

Q. When you went there this particular January the 7th, Saturday, at approximately 2:30, did you see Leslie Stickler there?

A. Yes, I did.

Q. Did you see anybody else there?

A. Yes, I did.

Q. Approximately how many people?

A. Altogether, I would say nine.

Q. Did you know any of those people?

A. Yes.

Q. Could you give us the name of the people that you know?

A. Mr. Stickler, Mr. Shott, Mr. Ruf, a lady that they called Mickey, who is Mr. Shott's secretary, Ray Trimble, and there was two lawyers.

Q. Lawyers for whom?

A. Mr. Stickler's lawyers.

Q. Do you know their names?

A. No, I don't

Q. What, if anything, did Mr. Stickler have to say at this particular meeting?

A. Well, as I entered with my bookkeeper—that is another one that was there, I believe that was all—they were, the lawyers, were talking about an emergency fund.

Q. Now, are you talking about Mr. Stickler's lawyers at this time; is that right?

A. Yes, sir.

Q. Mr. Stickler's lawyers were talking about an emergency fund?

A. That's right.

Q. All right, go ahead.

A. And they were talking about this operation. According to the Securities Exchange, they were told to cease this operation. And evidently—not evidently—but a meeting was to be made, or was in progress the following Wednesday, whereby Mr. Stickler was to go to Columbus to appear before this Securities—

Mr. Smith: I object to all of this as being irrelevant. These are two lawyers and not Mr. Stickler.

Q. Was Mr. Stickler present when these two lawyers were talking?

A. Yes, he was.

Q. You can go ahead.

Mr. Smith: I object on the ground of relevancy; incompetent.

The Court: Objection overruled.

Mr. Smith: Exception.

A. So the lawyers explained the purpose of the fund, and Mr. Stickler said that, "It's like putting good money after bad money, but if this would be possible with all the investors involved, we could possibly salvage some of this."

Q. I don't think these ladies and gentlemen quite understand what you have been telling us, Mr. Steffen. Perhaps I can help you if I say this; that these people weren't there and you were there, so it is very familiar with you. You have to explain a little more thoroughly what went on at that meeting so they can understand it.

The Court: Were you called to that meeting?

The Witness: Yes, sir.

Q. You were asked to be at that meeting?

Mr. Smith: Objection unless he tells who asked him to be there.

Q. Were you called to attend that meeting?

A. I was called approximately 1:30 by Mr. Shott.

Q. Now, would you explain this transaction or this arrangement that Mr. Stickler's lawyers were attempting to set up at that time?

A. What they said was with this fund, emergency fund, was to pay those investors off that were extremely nervous, or would be extremely nervous, because a portion of them didn't know that the dealings were blew up, so to speak.

Q. Well, did you know the dealings had blown up?

A. I knew it at t. ' time.

Q. Did Mr. Stickler have anything to say at that time as to what these dealings were?

A. Well, with a lot of conversation in that office on the dealings and how much equity he had in his home and his automobiles and things in his office.

Q. Well, Mr. Steffen, what I am getting at is this: Did he say, while you were present, whether or not there were any deals, whether or not there were any contractors?

Mr. Smith: Your Honor, I object to this. The prosecutor is deliberately leading this witness. He has been doing it all the time, putting words in his mouth. If he doesn't like the answer, he tries to suggest another one.

The Court: Objection overruled.

Mr. Smith: Exception.

The Court: Proceed. He may answer.

Q. You may answer, Mr. Steffen.

A. Mr. Stickler said that he should have gone to Ed Shott a couple of years ago and said, "Look, Ed, this whole thing is a farce, or a hoax, and so"—I forget the exact word, but it meant that there was nothing. He said that he should have gone there two years ago and said that, "Let's stop this, there are no contractors, there are no deals." He says, "Well, let's just quit this operation." He said, "There is no such thing."

Q. Did he tell you at that time, Mr. Steffen, how he happened to start this thing?

A. I asked him how he ever got started in this that afternoon. And he says he and another lawyer, years ago, formed like a collection company, where they would collect bad debts, and he and this lawyer made collections and this other lawyer got scared of the way they were

operating and left him hung with $35,000.00 embezzlement. That is what he said, and that is the way he started. He borrowed from other—from the original people to cover up the embezzlement.

Q. Mr. Steffen, how did you happen to start investing in particular with Mr. Stickler? Would you tell these ladies and gentlemen?

A. Well, Mr. Shott had told me that—

Q. That is hearsay. You can't have any conversation that you might have had with someone else. The only conversation you can tell these people are the conversations where Mr. Stickler was present. What I am getting at is this: Was it at your suggestion that you invest particularly with Mr. Stickler or was it his suggestion?

Mr. Smith: Objection. He is again leading this witness to suggest answers.

The Court: Objection overruled.

Mr. Smith: Exception.

Q. You may answer, Mr. Steffen.

A. He made several phone calls to me.

Q. When was that?

The Court: This is Stickler?

The Witness: Stickler. He made several phone calls to me prior to January the 3rd, and also—

Q. Can you tell us when they were, when they started?

A. Well, they started before he went to Florida.

Q. Do you know when he went to Florida?

A. Somewhere around Christmas.

Q. What did he say to you in these phone calls?

A. He said he was going to Florida on this operation. He was taking his wife and child there, and he would be down there a short time and he would come back and would like to get me to go direct with him because he was

tired of this in-between men. He figured in a short time he would have everybody direct and cut out all this middleman operation.

Mr. Cartolano: You may cross examine.

CROSS EXAMINATION by Mr. Smith.

Q. Do you have a license to loan money?

Mr. Cartolano: I didn't hear the question.

Q. I say, do you have a license to loan money?

Mr. Cartolano: I didn't hear that. What is the question?

Mr. Smith: I said, Do you have a license to loan money?

Mr. Cartolano: Objection, your Honor.

The Court: Objection sustained.

Q. Well, now, you were loaning money, weren't you?

Mr. Cartolano: Objection, your Honor. I think the jury will determine what he was doing.

The Court: Objection sustained.

Mr. Smith: Now, your Honor, he said interest and principal.

The Court: Objection sustained. As I understand you, Mr. Stickler had told you that he was loaning money, got a certain rate back, you were sharing in that rate?

Mr Smith: Objection, your Honor. Now, I object to the Court's question. I object to this on the part of the Court.

* * * * *

Q. Now, Mr. Steffen, let's go back to your first meeting with Mr. Shott. You said you met Mr. Shott in your pizza place, is that right?

A. Yes.

Q. You saw him on several occasions?

A. Yes.

Q. And then finally you were up to Mr. Shott's office?

A. Yes.

Q. And while you were up at Mr. Shott's office, Mr. Stickler, allegedly, came in; is that right?

A. That's right.

Q. And he gave Mr. Shott some money and gave Mr. Shott, rather, some checks and a note; is that right?

A. That's right.

Q. Now, as a matter of fact, Shott called Stickler in there while you were present, didn't he?

A. Please.

Q. Stickler came to Shott's office while you were there, right?

A. That's right.

Q. And he called him in and took his checks and his notes and Stickler left, didn't he?

A. I don't remember if he called him in or not. I don't remember if he was introduced by his secretary—or I know he didn't call him in, because he didn't know he was out there, I don't believe. He was talking to me. But the first I seen of him, he was coming through the door. How he got in there I don't know.

Q. Anyway, after Shott took his money, Shott did the talking to you, didn't he? Shott's the one who told you about the big deal he had, not Stickler?

A. No. Shott told me, primarily, before Stickler came in.

Q. Oh, Shott got you down there to tell you about a deal, didn't he?

A. I went down—yes, primarily, that is why I went down there.

Q. Shott got you down there to tell you he had a big deal going with contractors, and so forth, right?

Mr. Cartolano: Your Honor—

A. No.

Mr. Cartolano: I think we might object here. We are not trying Mr. Shott here; we are trying Mr. Stickler.

The Court: Objection overruled.

Q. Shott got you down there, didn't he?

A. I had asked Mr. Shott how I could make additional money, and—do you want the whole bit?

Q. Yes. You were looking for a fast buck; is that right?

A. Not necessarily, no, extra income.

* * * * *

Q. Trimble was—when was Trimble, you loaned money to Trimble?

Mr. Cartolano: Pardon me, Mr. Smith. Your Honor, again we have to object to that for the sake of clarity of this trial. Only Mr. Stickler is being tried today in this court room.

The Court: Objection sustained.

Mr. Smith: The credibility of this witness.

The Court: Objection sustained.

Q. Now, you are telling this jury that you loaned money to Mr. Stickler as a result of Mr. Stickler telling you that the middle man was cut out, right; that he could cut the middle man out?

A. No.

Q. As a matter of fact, what actually happened was, you were giving Shott one-half of every bit of interest you were getting; you were giving Trimble one-half of every bit of interest you were getting, so you went directly to Stickler and said, "How about me loaning it to you directly," didn't you?

A. No.

Q. You were the one who was tired of somebody else making interest on your money, right?

A. No.

Q. You deny that?

A. Right.

Q. Well, you were perfectly satisfied with giving Shott 50 per cent of your interest; is that what you are telling this jury?

A. He offered me 50 per cent of what he was getting on a note from Stickler, and I accepted. That is the way it happened.

Q. And you were perfectly satisfied with taking 50 per cent and putting your money up?

A. Right.

Q. And you were perfectly satisfied with taking 50 per cent from Trimble?

A. Right.

Q. And then you are saying now that you waited for Stickler to come to you? You knew who Shott was loaning the money to, didn't you?

A. That's right.

Q. You knew who Trimble was loaning the money to, didn't you?

A. That's right

Q. It was no secret to you?

A. That's right.

Q. You knew that they were loaning it to Stickler?

A. That's right.

The Court: In other words, all along you knew that these people with whom you were directly dealing with first were dealing—

The Witness: With Stickler.

The Court: On your dealings with them, they were dealing with Stickler?

Q. Let's boil this down. Let's take one transaction you had. 9/6/60—

Mr. Cartolano: Your Honor, we object unless this was a transaction with Mr. Stickler.

Mr. Smith: We are going to use this, your Honor, to illustrate the point of what he knew, what he was doing.

The Court: He has already said he knew. You were dealing with Mr. Shott before you dealt directly with Mr. Stickler, as I understand you.

The Witness: That's right.

The Court: In answer to his question, you knew that Mr. Stickler was up along the line?

The Witness: Mr. Stickler was the top man.

The Court: Top man, O. K. Also, when you dealt with Mr. Trimble before you dealt directly with Mr. Stickler, on these transactions in January, did you know, as I understand your answer to his question, that Mr. Stickler was at the top?

The Witness: That's right.

The Court: All right.

* * * * *

Q. Well, it was 60 days, it would be $6,000.00, right? You never had an open-end note?

A. Sixty days, no, it wasn't.

Mr. Cartolano: Wait a minute, Mr. Steffen. For the sake of clarification, are we talking about Mr. Stickler now?

Mr. Smith: I am talking about Mr. Stickler.

The Witness: With Mr. Stickler, 60 days for $5,000.00, was a thousand dollars, yes, that's right, for that operation, or that transaction.

Q. By the way, you knew also that Mr. Shott told you he had Mr. Stickler insured for half a million dollars?

Mr. Cartolano: We object to that.

The Court: Objection sustained.

Q. Well, when you first met Mr. Shott and Mr. Stickler came in, you didn't deal with Mr. Stickler, you didn't deal with Mr. Stickler—you didn't give Mr. Stickler any money, did you? You loaned it to Shott?

A. I took Shott's note, yes, sir.

Q. The same type of note you have got here, right, cognovit note?

A. Similar, yes, sir.

Q. Similar, same, right, standard form cognovit note?

A. It was a cognovit note.

Q. You can buy ————————————

A. I think it looked a little different than that. It was a cognovit note.

The Court: At that time did you know that Mr. Stickler was in the picture?

The Witness: Yes, I did.

Q. But you didn't loan any money to Stickler?

The Court: What did Shott tell you about the source of that money that you were getting?

The Witness: Where it was coming from?

The Court: Yes.

The Witness: From Mr. Stickler.

The Court: And where did he get it?

Mr. Smith: Your Honor, any representations Shott made would not be any representations of Stickler.

The Court: Well, you brought all that in there, and I want to clear it up. I think I am just repeating. I want to be sure. And at that time Shott explained to you the source of this?

The Witness: He explained to me, yes, sir.

The Court: That Stickler was having certain operations?

The Witness: That Stickler was paying him, and he used the example of 90 days, that Stickler was paying Shott 35 per cent for 90 days, and it was in

agreement, or with me, would it be all right with me, in other words. He would—he presented this deal to me; that he would split the interest.

The Court: I mean he explained the source that Mr. Stickler was getting it from?

The Witness: From contractors.

The Court: From contractors. And did Mr. Stickler ever give that same explanation?

The Witness: That's right.

Mr. Smith: Well, now, your Honor, we except to that. Mr. Stickler is not charged under Section "B" of this code, but under "A" and "C".

The Court: I know what he is charged under.

Mr. Smith: He is not charged with misrepresentation at all.

The Court: I am not saying anything about misrepresentation, and I don't think you could comment on that.

Q. Now, you are telling the jury, I believe, that even though Stickler was there in the office, you loaned your money to Shott, right?

A. That's right.

Q. And on every single transaction that you had with Shott, Stickler was not there, was he?

Mr. Cartolano: Objection to the transactions with Shott.

Mr. Smith: Well, now, the Judge asked the questions about these things.

The Court: I will permit the one question.

Q. When you were loaning money to Stickler and collecting your return, Shott—I am sorry—when you were loaning money to Shott, Stickler wasn't there, was he?

A. When?

Q. During these transactions.

A. All of them?

Q. Yes.

A. No, not all of them.

Q. Now, did you get your check or your cash from Shott or did you get it from Stickler?

A. From Shott.

Q. You got Shott's cash?

A. Yes, I got Shott's check, always check.

Q. In other words, what you did you loaned your money directly to Shott on all occasions except the last one, right, and Trimble?

A. Last two, yes.

Q. It went from Steffen to Shott, and the only person responsible to you was Shott, right?

A. Shott and Trimble.

Q. Stickler was in no way responsible to you?

A. To me?

* * * * *

EXCERPTS FROM SESTITO TESTIMONY.

Q. But it was for Stickler using your money? He was to give you $1,200.00 over your $6,000.00?

A. He was going to invest it. More or less it was put to me, was investment. That is the way it was put to me.

Q. He was going to give it to you, nobody else, right, Mr. Sestito?

A. That is what he said, yes.

Q. You weren't looking to anybody else but Mr. Stickler, is that right?

A. That's right.

Q. You weren't looking for any contractors?

A. No, I wasn't.

Q. I am going to ask you another question, Mr. Sestito. You also, before you loaned Mr. Stickler money, loaned Mr. Shott money, didn't you?

Mr. Cartolano: Objection, your Honor. Again, I say we are not trying Mr. Shott's indictment.

Mr. Smith: This goes to how these people knew each other also, your Honor.

The Court: Objection sustained.

Q. I will ask you—

The Court: Unless these have some connection with the prior dealings of Mr. Shott.

Q. If it isn't a fact that you came from Mr. Shott's office over to Mr. Stickler's office on Mr. Shott's advice?

Mr. Cartolano: Your Honor, again it the same objection.

The Court: With reference to these—

Mr. Smith: With reference to these transactions, yes, sir.

A. No, sir.

The Court: Did these have anything to do with your dealings?

The Witness: No, sir.

The Court: Of a similar nature with Mr. Shott?

The Witness: No, sir. Mr. Shott did not mention anything.

The Court: Objection sustained.

Q. Now, during this conversation that you had with Mr. Stickler in his office, which the prosecutor asked you about, isn't it a fact you had in your possession at that time a $2,000.00 check from Mr. Shott which you showed everybody in the office?

Mr. Cartolano: Now just a moment.

The Court: Objection sustained. Mr. Smith, I sustained the objection because I was assured these had nothing to do—in other words, this was not a cancellation.

The Witness: No, sir, it was not. Mr. Shott never mentioned him at all.

The Court: Objection sustained, Mr. Smith, and I do not think you should ask any more similar questions.

Mr. Smith: Your Honor, this is relating to the conversation which the prosecutor brought out.

The Court: Objection sustained; proceed. Objection sustained, and proceed, Mr. Smith.

Q. Now, the prosecutor brought out a part of the conversation here that you claim occurred. There was more to that conversation than just you talking to Mr. Stickler about this $6,000.00, wasn't there?

Mr. Cartolano: Just a moment, Mr. Sestito. Your Honor, we have made three objections and the Court has sustained the three objections, and Mr. Smith is attempting to do what the Court has said he cannot do. Again I must say we are trying one man today.

The Court: I don't know.

Mr. Smith: Your Honor, it is a substantial rule of law, if a part of a conversation is brought out, the whole conversation can be brought out.

The Court: I will rule, Mr. Smith. If I want an argument I will ask for it. I don't know what this question is bringing out. It is a little different. Did you have any other conversation? Is that your question?

Mr. Smith: Yes, sir, there was more conversation.

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